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August 9, 2005 DOCKET FILE COPY ORIGINAL

## Via Hand Delivery

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

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AUG - 9 2005

Federal Communications Commission  
Office of Secretary

 ORIGINAL

Re: Northeast Communications of Wisconsin, Inc. dba Cellcom  
CC Docket 94-102  
Amended Request For Limited Waiver and Extension of the  
Commission's Phase II E911 Rules

Dear Ms. Dortch:

On behalf of Northeast Communications of Wisconsin dba Cellcom ("Cellcom"), we hereby submit an amended request for limited waiver and extension of the Commission's Phase II E911 rules ("waiver request"). Specifically, Cellcom is amending its waiver request in order to limit its request for confidential treatment with respect to Exhibit 8. In its initial waiver request, Cellcom sought confidential treatment for all of Exhibit 8. By this amendment, it now only requests confidentiality as to certain commercially sensitive information contained in Exhibit 8, including but not limited to, equipment churn rate. All of that information has been redacted from the revised Exhibit 8, and no request for confidentiality extends to that Exhibit, as redacted. Hence, submitted herewith is an amended waiver request with the redacted Exhibit 8.

Should you have any further questions, please contact the undersigned.

Very truly yours,



Thomas Gutierrez

Todd Slamowitz

Attorneys for Northeast Communications, Inc. dba Cellcom

Enclosure

No. of Copies rec'd. 047  
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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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AUG - 9 2005

In the Matter of )

Federal Communications Commission  
Office of Secretary

Revision of the Commission's Rules To )  
Ensure Compatibility With Enhanced 911 )  
(E911) Emergency Calling Systems )

CC Docket 94-102

To: Wireless Telecommunications Bureau

**AMENDED REQUEST FOR A LIMITED WAIVER AND EXTENSION  
OF THE COMMISSION'S PHASE II E911 RULES**

Northeast Communications of Wisconsin, Inc. dba Cellcom, on behalf of itself and its affiliates<sup>1</sup> (collectively "Cellcom"), by counsel and pursuant to 47 C.F.R. § 1.925, hereby requests a limited waiver and extension of the 47 C.F.R. § 20.18(g)(1)(v) Phase II enhanced 911 (E911) requirement that Tier III carriers achieve a location-capable handset penetration rate among its subscribers of at least 95% by December 31, 2005 ("95% subscriber penetration requirement").<sup>2</sup>

As set forth below, enforcement of the 95% subscriber penetration requirement to Cellcom would not serve the underlying purpose of the rule. Further, it would ignore the unique facts and circumstances involving Cellcom's markets. As such, grant of the limited waiver and extension request would serve the public interest. In addition, as set

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<sup>1</sup> Cellcom's affiliates for the purpose of this petition include the following entities: Brown County MSA Cellular Limited Partnership; Northeast Communications of Wisconsin, Inc.; Nsighttel Wireless, LLC; Wausau Cellular Telephone Company Limited Partnership; Wisconsin RSA #4 Limited Partnership; and Wisconsin RSA #10 Limited Partnership.

<sup>2</sup> Revisions of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 940192, *Order to Stay* (rel. July 26, 2002).

forth in Section 106(a) of the Act, the Commission is to grant a waiver to Tier III carriers “if strict enforcement of the 95% subscriber penetration requirement would result in consumers having decreased access to emergency services.”<sup>3</sup> Here, that would be the case.

## **I. BACKGROUND**

Cellcom has been providing wireless service in rural northeast Wisconsin since 1987. It holds numerous CMRS licenses as set forth in Exhibit 1 and operates a CDMA network. As described more fully below, Cellcom has deployed a “handset-based” E911 solution throughout its wireless network.

## **II. RELIEF SOUGHT**

Cellcom requests a waiver of 47 CFR § 20.18(g)(1)(v) and a twenty-seven (27) month extension (or until March 31, 2008) of the requirement that Tier III carriers must achieve a penetration rate for location-capable handsets among its subscribers of at least 95% by December 31, 2005.

## **III. E911 PHASE II COMPLIANCE TO DATE**

Cellcom has met every Phase II handset based deadline to date, well in advance of the Commission’s deadline. See Exhibit 2. Cellcom commenced selling and activating location-capable handsets on February 13, 2003, i.e. well before the Commission

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<sup>3</sup> In December 2004, Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (*ENHANCE 911 Act*). The *ENHANCE 911 Act* directed the Commission to grant qualified Tier III carriers’ requests for relief of the December 31, 2005 ninety-five percent penetration deadline for location-capable handsets, as set forth in Section 20.18(g)(1)(v) of the Commission’s Rules, if “strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services.”

mandate that Tier III carriers begin selling and activating location-capable handsets no later than September 1, 2003. Further, by August 31, 2003, Cellcom sales of location-capable handsets exceeded 25 percent in all its markets. (The Commission did not require 25 percent compliance until November 30, 2003 for Tier III Carriers). Additionally, by May 31, 2004, Cellcom sales of location-capable handsets exceeded 89 percent in each of its markets (The Commission required only 50 percent compliance as of May 31, 2004 for Tier III Carriers). Finally, the Commission rules required that by November 30, 2004, Tier III carriers ensure that 100 percent of all new digital handsets be location-capable. Cellcom achieved this benchmark on April 1, 2004 when it instituted a policy requiring that only location-capable handsets be sold by Cellcom or its agents.

With respect to the 95% subscriber penetration requirement here at issue, 65.56% of Cellcom's subscribers are already using location-capable handsets. See Exhibit 3. This is a sharp increase from January 1, 2004, when only about 15% of its subscribers were using location-capable handsets. Thus, as Exhibit 4 demonstrates, Cellcom has made substantial strides toward increasing the percentage of location-capable handsets among its subscribers during 2004.

#### IV. Waiver Standard

A waiver is appropriate whenever special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>4</sup> The Commission has established standards to be used when acting upon requests for a waiver of E911

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<sup>3</sup> 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D. C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D. C. Cir. 1969)).

deadlines and obligations.<sup>5</sup> The Commission has held that it will grant waiver requests that are specific, focused, and limited in scope, with a clear path to full compliance.<sup>6</sup> Further, the Commission has stated that carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts aimed at compliance in support of any waiver request.<sup>7</sup> As set forth below, Cellcom meets the Commission's standards and that the circumstances underlying the request, in sum, present a special case that justifies a limited E911 Phase II waiver and extension.

## **V. A WAIVER IS NECESSARY TO SERVE THE PUBLIC INTEREST**

### **A. Public Safety Answering Point (PSAP) Readiness To Process Phase II Requests**

There is only one PSAP in Cellcom's service area that is capable of processing Phase II E911 information. Moreover, this PSAP has not requested E911 service from Cellcom. To date, Cellcom has received Phase II PSAP requests from only nine PSAPs which (collectively) serve the following counties: Lincoln, Manitowoc, Marinette, Portage, Brown, Outagamie, Winnebago, Calumet and Vilas. These counties are not Phase II ready and are not expected to be Phase II ready until at least the third quarter of 2005 at the earliest. See Exhibit 5 which sets forth the anticipated Phase I and Phase II implementation dates of the PSAPs located within Wisconsin. Significantly, none of the other sixteen (16) counties in which Cellcom provides service have made any Phase II

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<sup>4</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17457-58, paras. 43-44 (2000) (*E911 Fourth Memorandum Opinion and Order*).

<sup>5</sup> *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17458, para. 44.

<sup>6</sup> *Id.*

request. Moreover, three (3) counties in Cellcom's service area has indicated that they have no plans to implement Phase II service in the foreseeable future. Finally, Cellcom has been in communication with several PSAPs regarding the timeframe for Phase II compliance and anticipates working more closely with them as each PSAP moves toward being Phase II ready.

#### B. Commitment and Path to Achieving Compliance

As demonstrated by the substantial increase in location-capable handsets among its subscribers during 2004, Cellcom is, and has been, committed to moving toward the 95% subscriber penetration requirement. Cellcom has selected Intrado as its E911 services and ALI database provider. It has also ensured that all new handsets sold and activated are location-capable. More than a year ago, Cellcom instituted a firm company policy requiring that all handsets activated and upgraded by Cellcom employees be location-capable handsets. See Exhibit 6. In addition, Cellcom instituted a policy that, as of April 1, 2004, all handsets sold or activated by Cellcom agents be location capable. See Exhibit 7. As a result of these policies, Cellcom was more than timely in meeting the November 30, 2004 requirement that Tier III carriers ensure that all new handsets sold and activated are location-capable.

Cellcom believes it will be able to meet the 95% subscriber penetration requirement by March 31, 2008 — one month after the date in which the Commission's analog requirement sunsets. That impending analog sunset will likely provide an incentive for customers to upgrade their handsets. However, until Cellcom is able to build out its digital network to the extent that it would provide the same coverage as its analog service in rural parts of its service area, Cellcom will have difficulty converting

those analog subscribers to location-capable handsets. This is true even if Cellcom offers a substantial rebate on location capable handsets in order to entice analog subscribers to transition to digital. Finally, Cellcom anticipates that about 72 percent of its subscribers will have location-capable handsets by December 31, 2005 and about 85 percent by December 31, 2006. Nonetheless, it expects conversion of the remaining 15 percent to be a slower process due to the various factors described herein.

C. Extenuating Circumstances Cause Rigid Enforcement of Section 20.18(g)(1)(v) To Be Contrary To The Public Interest

See Exhibit 8.<sup>8</sup>

D. Strict Enforcement of the 95% Subscriber Penetration Rule Would Result in Consumers Having Decreased Access to Emergency Services

Strict enforcement of the 95% subscriber penetration rule would most likely force Cellcom to expend unnecessary resources in order to merely satisfy the Commission's rules. This is the case even though it is more than likely that no or very few PSAPs in its service area will be capable of receiving Phase II information on December 31, 2005. Currently, Cellcom's analog customers have the ability to dial "911" in rural areas of Wisconsin. For example, if a Cellcom subscriber drives a mere 30 miles outside of Green Bay, it will encounter heavily wooded, remote, rural landscape. Nonetheless, that customer, with its analog handset, will still be able to dial "911" should an emergency arise. Strict enforcement of the 95% subscriber penetration rule would prevent that customer from obtaining emergency services (such as the ability to dial "911") because, if forced to transition analog subscribers to digital handsets, Cellcom would not be

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<sup>8</sup> This argument contains specific commercial information, the disclosure of which would be likely to cause substantial harm to the competitive position of Cellcom. Hence, Cellcom finds it best to include this argument as a confidential exhibit.

capable of duplicating that same coverage for its digital network by December 31, 2005. At this time, there is not a business incentive to first concentrate on providing equivalent digital coverage in the rural, remote areas of its licensed area (achieving such a result would require additional cell sites to those currently in place for its analog network). Rather, Cellcom's focus is on upgrading its digital network in other parts of its licenses area that would ultimately provide for better and more expansive wireless service instead of having to expend additional resources on upgrading its handsets; specifically those analog subscribers that are presently receiving exceptional service. If forced to comply with the 95% subscriber penetration rule, the end result will be a system whereby consumers have "decreased access to emergency services"; especially in rural and remote areas of Cellcom's service area.

## **VI. Conclusion**

Based on the foregoing reasons, grant of a limited waiver of the Commission's Phase II E911 rules will serve the public interest.

Respectfully submitted,

NORTHEAST COMMUNICATIONS OF  
WISCONSIN, INC. DBA CELLCOM

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703-584-8678

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Thomas Gutierrez  
Todd Slamowitz

*Its Attorneys*

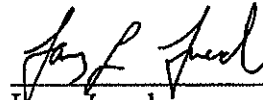
August 9, 2005



**DECLARATION OF LARRY LUECK**


I, Larry Lueck, declare under penalty of perjury that the foregoing is true and correct.

1. I am the Manager of Government Relations of Northeast Communications of Wisconsin, Inc. dba Cellcom.
2. I am familiar with the facts contained in the foregoing "Request for Limited Waiver and Extension of the Commission's Phase II E911 Rules", and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

  
\_\_\_\_\_  
Larry Lueck  
May 27<sup>th</sup>, 2005

## ENGINEERING STATEMENT

The Engineering Division of the law firm of Lukas, Nace, Gutierrez and Sachs has been retained to assist Northeast Communications of Wisconsin, dba Celcom, on one engineering matter relating to the subject E911 request. Specifically, we have been asked to provide a realistic estimate of the difference in coverage between analog and digital operations in the Cellcom system. Our estimates are set forth in Exhibit 9. They are based on reliable coverage predictions at two typical sites in a suburban environment, utilizing popularly employed antennas at optimum heights above ground level ("AGL") and RF output power levels. Each plot shows reliable coverage for identical site and operating parameters for both analog and digital (CDMA) cells, one for an omni-directional antenna configuration and the other for a three-sectored antenna configuration. The plots take into account terrain and clutter in the area and other characteristics common to the Cellcom system. As shown in Exhibit 9, analog service covers an area at least four times greater than that covered by the digital service under typical and equivalent operating configurations. The differences between the two technologies will vary somewhat cell by cell and based upon many other factors but, generally, under like operating conditions, the reliable coverage differences shown at Exhibit 9 are reasonable and expected.

  
Leroy A. Adam,  
Senior Consulting Engineer

# **Exhibit 1**

**CMRS Licenses**

<b>Licensee</b>	<b>Call Sign(s)</b>	<b>Radio Service</b>	<b>Market(s)</b>
Brown County MSA Cellular Limited Partnership	KNKA547	CL	CMA186- Green Bay, WI
Metro Southwest PCS, LLP	KNLF931, KNLG938, KNLG939, KNLG940, KNLG941, KNLG942, KNLG943	CW	BTA019- Appleton-Oshkosh, WI; BTA148- Fond du Lac, WI; BTA206- Iron Mountain, MI; BTA207- Ironwood, MI; BTA276- Manitowac, WI; BTA417- Sheboygan, WI; BTA466- Wausau-Rhineland, WI
Northeast Communications of Wisconsin, Inc.	KNLF999	CW	BTA173- Green Bay, WI
Wausau Cellular Telephone Company Limited Partnership	KNKA619	CL	CMA263- Wausau, WI
Wisconsin RSA No. 4 Limited Partnership	KNKN395	CL	CMA711 – Wisconsin 4 – Marinette
Wisconsin RSA-10 Limited Partnership	KNKN294	CL	CMA717 – Wisconsin 10 – Door

## **Exhibit 5**

## Wisconsin's E911 Implementation Schedule<sup>1</sup>

County	Phase I Impl. Date	Phase II Impl. Date
Adams	3Q 2007	3Q 2007
Ashland	4Q 2006	4Q 2006
Barron	4Q 2005	4Q 2005
Bayfield	4Q 2006	4Q 2006
Brown	1Q 2006	1Q 2006
Buffalo	3Q 2007	3Q 2007
Burnett	1Q 2006	1Q 2006
Calumet	4Q 2005	4Q 2005
Chippewa	1Q 2006	1Q 2006
Clark	1Q 2006	1Q 2006
Columbia	1Q 2006	1Q 2006
Crawford	4Q 2005	4Q 2005
Dane	September 2005	September 2005
Dodge	April 2006	April 2006
Door	January 2006	January 2006
Douglas	3Q 2005	3Q 2005
Dunn	1Q 2006	1Q 2006
Eau Claire	1Q 2006	1Q 2006
Florence	September 2005	September 2005
Fond du Lac	January 2005	January 2005
Forest	January 2006	January 2006
Grant	1Q 2006	1Q 2007
Green	November 2006	November 2006
Green Lake	4Q 2006	4Q 2006
Iowa	4Q 2006	4Q 2006
Iron		
Jackson	September 2005	September 2005
Jefferson	December 2005	December 2005
Juneau		
Kenosha	4Q 2007	4Q 2007
Kewaunee	3Q 2007	3Q 2007
La Crosse	1Q 2007	1Q 2007
Lafayette	1Q 2006	1Q 2006
Langlade	2Q 2006	2Q 2006
Lincoln	3Q 2005	3Q 2005
Manitowoc	4Q 2005	4Q 2005
Marathon	1Q 2006	1Q 2006

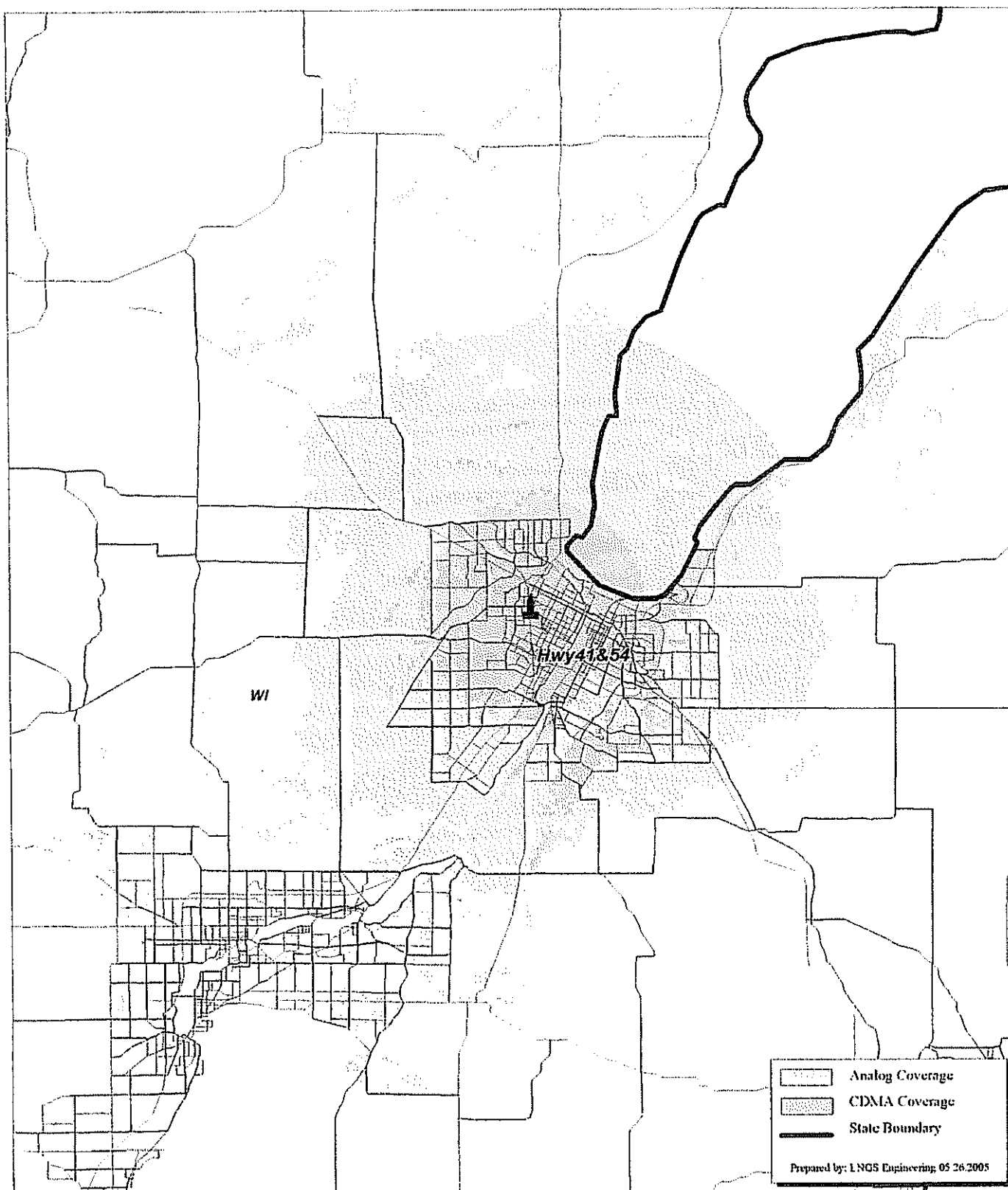
<sup>1</sup> This information contained in this exhibit was obtained from each PSAP's Wireless 911 Grant Application filed with the Public Service Commission of Wisconsin in which, in part, the PSAP sets forth the date of which it anticipates being Phase I and Phase II ready. To search for each PSAP's Wireless 911 Grant Application, go to [http://psc.wi.gov/apps/erf\\_search/default.aspx](http://psc.wi.gov/apps/erf_search/default.aspx) and enter "05 TR 104: in the Utility/Docket section.

Marinette	2Q 2006	2Q 2006
Marquette	4Q 2006	4Q 2006
Menominee		
Milwaukee	3Q 2005	3Q 2005
Monroe	3Q 2007	4Q 2007
Oconto	January 2006	January 2006
Oneida	June 2006	June 2006
Outagamie	4Q 2005	4Q 2005
Ozaukee	2Q 2006	2Q 2006
Pepin	3Q 2006	3Q 2006
Pierce	3Q 2006	3Q 2006
Polk	2Q 2006	2Q 2006
Portage	August 2005	August 2005
Price	2Q 2006	2Q 2006
Racine	June 2005	June 2005
Richland	2Q 2006	2Q 2006
Rock	3Q 2006	3Q 2006
Rusk	May 2005	March 2006
St. Croix	July 2006	July 2006
Sauk	1Q 2007	1Q 2007
Sawyer	4Q 2005	4Q 2005
Shawano	3Q 2006	3Q 2006
Sheboygan	2Q 2006	2Q 2006
Taylor		
Trempealeau	3Q 2006	3Q 2006
Vernon	1Q 2007	1Q 2007
Vilas	November 2005	November 2005
Walworth	3Q 2005	3Q 2005
Washburn	4Q 2006	4Q 2006
Washington	4Q 2005	4Q 2005
Waukesha	August 2004	February 2005
Waupaca	3Q 2006	3Q 2006
Waushara	4Q 2006	4Q 2006
Winnebago	4Q 2005	4Q 2005
Wood	4Q 2006	4Q 2006

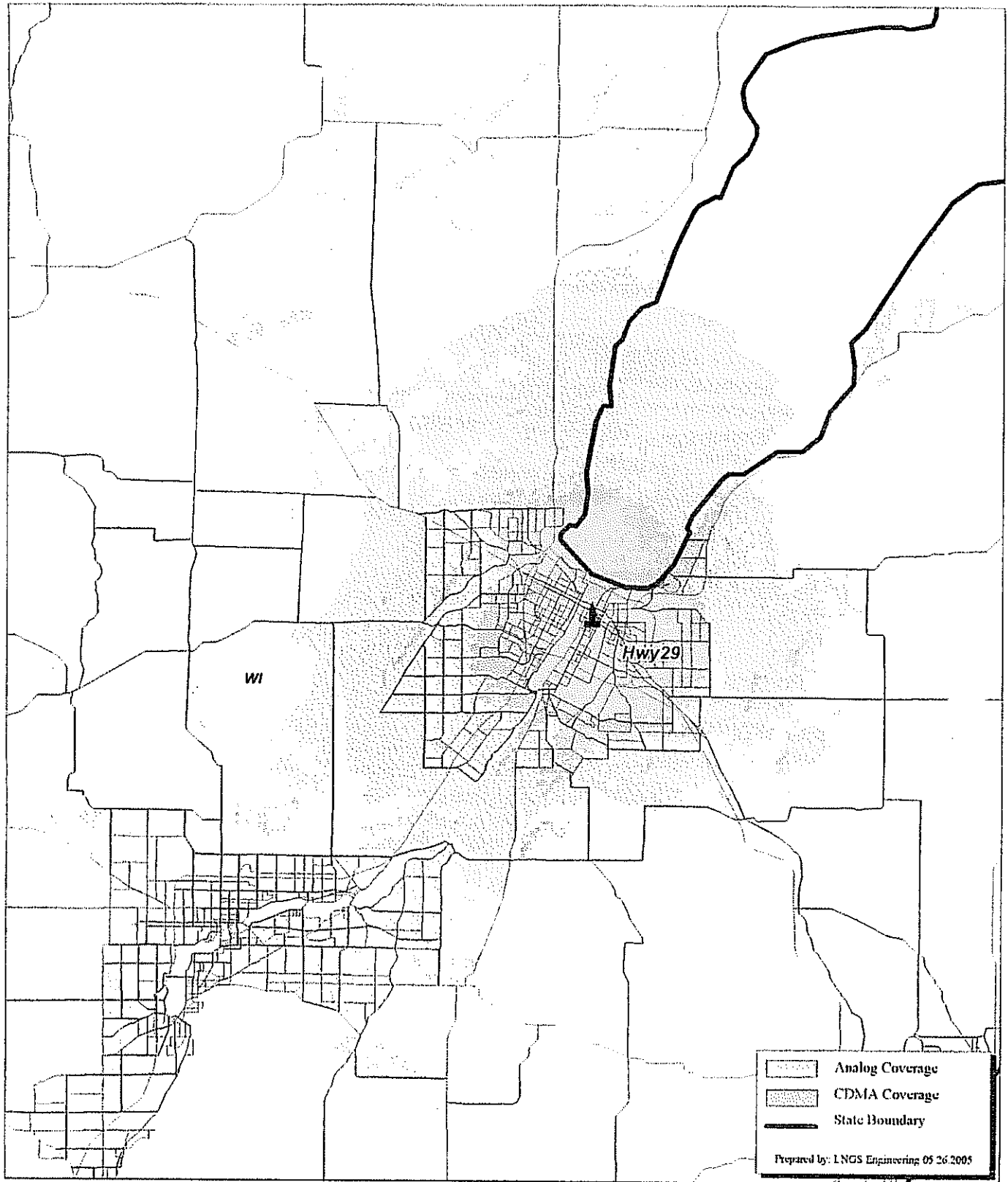
## **Exhibit 9**



*Comparison Analysis for TDMA and CDMA Coverage*  
*For an Omni Site*



*Comparison Analysis for TDMA and CDMA Coverage  
For a 3-Sector Site*



## **Exhibit 8**

**Extenuating Circumstances Cause Rigid Enforcement of Section 20.18(g)(v) To  
Be Contrary To The Public Interest**

Cellcom has faced considerable difficulty in converting its existing customers to location-capable handsets. The root of this problem is, in considerable part, the high level of service provided by Cellcom. This has resulted in an unusually low monthly customer churn rate of [redacted] during 2004. It has also contributed to an incredibly low customer equipment upgrade rate. Specifically, Cellcom's customers average about [redacted] months with the same handset (according to the Commission, the industry churn rate on handsets is 18-24 months). Another reason for the low customer equipment upgrade rate is that Cellcom's customers include government agencies and school districts, which at this time, have not worked into their budget location-capable handsets. In addition, Cellcom's service area is predominately rural (wooden terrain, lakes, etc) in which existing handsets provide them with exceptional coverage. Specifically, a considerable number of Cellcom's customers use 3 watt analog "bag phones" (approximately [redacted] customers or [redacted] of its customer base have these phones). Their transmitting power provides for superior coverage in rural areas, which simply cannot be duplicated by E911 compliant digital handsets. The attached engineering statement demonstrates that the signal strength with the analog handsets being used by Cellcom customers provides far greater coverage than the digital handsets. Specifically, in such rural, wooded areas as exist in Cellcom's service area, analog coverage could exceed four times the coverage provided by digital from a similar cell location. Whereas, in theory, digital coverage could be expanded, such expansion would require the addition of multiple digital sites for each one that is changed from analog to

digital. Given the ultra-rural nature of considerable portions of Cellcom's service area, this theoretical option is not practically available. Thus, these customers have a strong disincentive to upgrade to a location-capable handset. In order to speed up the conversion process, Cellcom has, and will continue to, offer incentive programs to entice handset upgrades. These incentive programs have been somewhat successful, but Cellcom nonetheless anticipates that conversion of its existing customers will be a slow process. Specifically, Cellcom anticipates meeting the 95% subscriber penetration rate by March 31, 2008.